IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LLOYD E. JORDAN	:	
v.	:	CIVIL NO. CCB-03-950
WESTERN DISTRIBUTING COMPANY, et al.	:	

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MEMORANDUM

Plaintiff Lloyd E. Jordan brings this action against Defendants, Western Distributing Company ("Western"), Ronnie G. Sasser, Jr., and Stephen Phillip Meininger, asserting claims arising out of an incident on Interstate 95 ("I-95") during which Sasser and Meininger, former employees of Western, allegedly attempted to cut off Jordan's vehicle and force it off the road. Pending before the court are cross-motions for summary judgment by Jordan and Western. For the reasons stated below, Jordan's motion will be denied and Western's motion will be granted.

I.

A.

U.S. Armored Currency ("USAC") is a subsidiary of Western and engages in the transportation of U.S. currency. Sasser and Meininger were employed as drivers and security guards for Western and USAC. At approximately 10:30am on February 26, 2002, Sasser was driving a Western armored tractor trailer containing approximately $9.9 million on I-95, and Meininger was a passenger in the same truck. Jordan was driving his vehicle on I-95 at this time as well. Sasser and Meininger allegedly attempted to cut off Jordan's vehicle and force it off the

road on numerous occasions. Additionally, Jordan alleges that Meininger, who Jordan claims was under the influence of marijuana, repeatedly leaned out of the passenger window and aimed a sawed-off shotgun at Jordan, threatening to "blow off" his head.

Shortly after the incident, Maryland State Police officers stopped the Western truck. Sasser and Meininger were subsequently charged with numerous crimes related to the incident. Ultimately, Sasser plead guilty to possession of marijuana in the District Court for Baltimore City, and a jury in Baltimore County Circuit Court found Meininger guilty of first degree assault and possession of a controlled dangerous substance. In addition, Western required Sasser and Meininger to submit to drug screens following the incident on I-95. Western maintains, and Jordan does not dispute, that Meininger's test occurred seven days after the incident.[1] Both men tested positive for drug use, and Western immediately terminated their employment.

Jordan then filed this civil suit in state court, and it was removed to this court in April 2003. He asserted claims against Sasser and Meininger for negligence, assault, and intentional infliction of emotional distress. He also filed two counts against Western, only one of which remains - a claim for negligent hiring, training, supervision, and retention of Sasser and Meininger. Specifically, Jordan argues that Western should not have hired Meininger because of his past drug use, and that it failed to conduct adequate follow-up tests following Meininger's hire to ensure that he was not abusing drugs while a Western employee.

B.

In order to become USAC drivers, a job applicant must undergo a thorough federal background check. First, potential drivers must complete a questionnaire in which they answer

[1]There is no evidence of how long after the incident Sasser was tested.

questions about citizenship, residence, education, prior employment experience, references, military service, and drug use. The questionnaire is submitted to the Bureau of Engraving and Printing ("BEP"). The BEP then conducts the background investigation and notifies Western whether the drivers have passed. In addition, Western reviews the applicants' driving records, requires them to undergo medical examinations, and conducts criminal records checks with the Colorado Department of Public Safety.[2] Sasser and Meininger passed all of these investigations and reviews.

As directed by regulations of the U.S. Department of Transportation ("USDOT"), Western also requires its drivers to undergo pre-employment drug screening. If an employee's drug test is positive, Western terminates the employee immediately. Sasser's pre-employment drug screen was negative. Meininger's drug screen, which occurred in November 2000, was positive, and he was terminated on November 24, 2000. Subsequently, Meininger exercised his right under USDOT regulations to engage the services of a substance abuse professional. He began working with JoJan P. Adams, a counselor he selected himself, who was affiliated with Bloomsburg Hospital in Bloomsburg, Pennsylvania. Adams evaluated Meininger and determined that he did not need drug or alcohol treatment and should be returned to full-time employment as soon as possible. She prepared a report explaining her findings and sent this report to Western. Thereafter, Western required Meininger to undergo another drug screen, which he passed. On January 4, 2001, Western re-hired Meininger as a driver. It did not conduct any further background checks on Meininger, nor did it require him to submit a new application or undergo another physical examination.

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[2]Western is incorporated in Colorado.

Western also maintains a random drug testing program through which a computer randomly selects a number of drivers to undergo drug screens every month. More than 50 percent of Western's drivers are tested each year, and there were no positive test results for either Sasser or Meininger between January 2001 and the incident in February 2002.

With respect to firearm usage, Sasser and Meininger were both trained by Western and successfully completed the National Rifle Association's basic pistol course. They were also licensed by the City and County of Denver, Colorado to be merchant guards. In order to be so licensed, they had to provide statements of convictions for any felony, misdemeanor, or ordinance violation (other than traffic violations), proof of a background name check, proof that the City and County of Denver had granted them authority to carry firearms, and proof of successful completion of a firearms training course. Licenses were not issued to anyone with a record of drug addiction or violent acts against persons or property.

Finally, Sasser and Meininger appeared to be competent drivers and had received many favorable comments from customers. No customers had observed any assaultive, erratic, or other behavior suggesting they were potentially dangerous.

Despite all of this screening, Jordan maintains that Western violated several provisions of the Federal Motor Carrier Safety Regulations ("FMCSR"), and was therefore negligent in hiring and retaining Sasser and Meininger. According to Jordan, Western violated the FMCSR by: (1) failing to contact Sasser and Meininger's previous employers to inquire about past alcohol or substance abuse; (2) allowing Meininger, a "known substance abuser," to operate a commercial motor vehicle, and failing to inform BEP of Meininger's positive drug test in fall 2000; (3) failing to conduct a proper pre-employment/return to duty test prior to re-hiring Meininger in

January 2001; (4) accepting the findings of Adams, Meininger's substance abuse counselor, whose testing allegedly did not comply with federal regulations; and (5) failing to conduct the proper follow-up drug tests during the 12 months after Meininger's re-hire. Jordan claims that Western's lack of documentation regarding the tests and inquiries they were supposed to have performed under the regulations demonstrates its negligence. To support this claim, he has attached to his motion for summary judgment the affidavit of Joseph Y. Morrison, who purports to be an expert in the requirements of the FMCSR.[3]

II.

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, admissions, and affidavits demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The materiality requirement of the summary judgment standard means that only those factual disputes that might affect the outcome of the suit preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In order for there to be a "genuine" issue of material fact, the evidence must be such that a reasonable jury could return a verdict for the non-moving party. *Id.* Furthermore, when a motion for summary judgment is made and supported with evidence, an adverse party may not rest upon the allegations in its pleading, but must respond with specific facts supported by affidavits or other documents showing that there is a genuine issue of fact for trial. Fed. R. Civ. P. 56(e). If the adverse party

[3]In addition to its summary judgment motion, Western has moved to strike Morrison's affidavit for being untimely and of questionable authenticity. I will deny as moot Western's motion to strike because my decision to grant Western summary judgment is the same whether or not the affidavit is considered.

fails to do this, summary judgment must be entered against it. *Id.*

III.

A.

To establish any cause of action in negligence, a plaintiff must show that the defendant owed him a duty of care, the defendant breached that duty, the plaintiff suffered damages, and the breach of duty was the proximate cause of the harm suffered. *Cramer v. Hous. Opportunities Comm'n of Montgomery Co.*, 304 Md. 705, 712, 501 A.2d 35, 39 (1985). Whether proximate cause exists depends, in part, on whether the general type of harm sustained was foreseeable. *Yonce v. SmithKline Beecham Clinical Labs., Inc.*, 111 Md. App. 124, 144-45, 680 A.2d 569, 579 (1996). With respect to a claim for negligent hiring, retention, or supervision, a plaintiff must show that the defendant employer knew or should have known by the exercise of reasonable care that an employee was potentially dangerous and capable of inflicting harm. *Bryant v. Better Business Bureau of Greater Maryland, Inc.*, 923 F. Supp. 720, 751 (D. Md. 1996); *Evans v. Morsell*, 284 Md. 160, 165, 395 A.2d 480, 483 (1978). Even if a plaintiff proves that the employer's failure to undertake a reasonable inquiry resulted in the hiring or retention of an employee, the plaintiff must further show that the hiring or retention actually caused the injury. *Cramer*, 304 Md. at 713.

It is undisputed that Western owed a duty of care to the general public in hiring and retaining its drivers. *See Evans*, 284 Md. at 164. For purposes of this motion, I will assume without deciding that Western breached that duty by not following all the federal regulations with respect to performing background checks on Sasser and Meininger, hiring Meininger, and requiring Meininger to submit to the required follow-up drug tests. I will also assume that

Jordan suffered cognizable damages, since that question has not been disputed. Nevertheless, Jordan's claim for negligent hiring and retention must fail because he has not shown that Western's negligence proximately caused his injuries.

B.

The first problem with Jordan's case is that he has failed to present sufficient evidence that Meininger was actually impaired by marijuana at the time of the incident. Jordan's amended complaint alleges that Meininger was under the influence of marijuana. (Am. Compl. ¶ 11.) However, he does not present any further evidence in his motion for summary judgment or his opposition to Western's motion that Meininger was impaired when he allegedly threatened Jordan from the passenger seat of the truck. It appears that Jordan assumes this fact is true because Meininger tested positive for drugs seven days later and was found guilty of possessing a controlled dangerous substance in the truck at the time of the incident.

Jordan's bare allegation in the complaint that Meininger was under the influence of marijuana does not suffice at the summary judgment stage, where facts need to be supported by affidavit, deposition, or other evidence. Fed. R. Civ. P. 56. Furthermore, Meininger's possession of a controlled dangerous substance and his positive drug screen seven days later do not logically require a finding that he was impaired at the time of the incident. To begin, there is no necessary link between possession of drugs and use of drugs at any given time. While Meininger likely intended to use the drugs in his possession, the mere presence of a controlled substance on his person at the time of the incident does not mean he was under the influence of drugs at the time of the incident. In addition, courts have found that drug tests indicating the existence of marijuana or other drugs in a person's blood are not evidence that the person was

impaired by the drugs on the day of the test, nor do they indicate when the drugs entered the person's body. *See Bieberle v. United States*, 255 F. Supp. 2d 1190, 1202 (D. Kan. 2003) (pure speculation to assume that air traffic controller was impaired by marijuana on the day she tested positive for marijuana); *Nat'l Fed'n of Fed. Employees v. Carlucci*, 690 F. Supp. 46, 49 (D.D.C. 1988) (positive drug test does not indicate that person is impaired by drug at the time of the test); *Horsemen's Benevolent & Protective Ass'n, Inc. v. State Racing Comm'n*, 532 N.E.2d 644, 647 (Mass. 1989) (positive test result for presence of a controlled substance does not establish that a person was impaired at the time he gave the urine sample). In this case, Meininger was not tested on the day of the incident, but rather seven days later, making the test even more unreliable as an indicator of his impairment during the incident.

Jordan claims that Western negligently hired Meininger despite his past drug use, and did not conduct adequate follow-up tests to ensure that Meininger was drug-free on the job. The only way that Jordan could demonstrate proximate cause is if Meininger was in fact under the influence of drugs at the time of the incident, and his impairment caused Jordan's injuries. If Meininger was not impaired by drugs when he allegedly assaulted Jordan, then Western's negligence in hiring and retaining a drug user would have absolutely no connection to the injuries Jordan suffered. Jordan's bare allegations and assumptions are insufficient to grant summary judgment in his favor, and they do not create a genuine dispute of fact that would defeat summary judgment for Western.

C.

Even if Jordan had established that Meininger was under the influence of marijuana, he still has not shown that Western's negligence in hiring and retaining Sasser and Meininger

proximately caused his injuries. As stated *supra*, in order to demonstrate proximate cause, Jordan must show that Sasser and Meininger's actions were foreseeable. That is, he must establish that Western knew or should have known that they were potentially dangerous to the general public. Jordan presents no facts in Sasser or Meininger's past that Western could have discovered that would give it reason to know that they would be violent or assaultive towards anyone. He does not allege, let alone support with evidence, that prior to the incident, Sasser or Meininger ever attacked anyone physically or with a weapon, threatened to attack anyone in this manner, used a vehicle to harm anyone, or threatened to use a vehicle to harm anyone. The only evidence Jordan points to is Meininger's first pre-employment positive drug screen, which he argues should have put Western on notice of Meininger's dangerousness.

The proximate cause inquiry does not require that the particular injury suffered be foreseeable, but it does require that the general *type* of harm be foreseeable. *Yonce*, 111 Md. App. at 144-45. In other words, simply because an employee might have a history of or propensity for causing one kind of injury, an employer is not on notice that the employee could cause a completely different kind of injury. *See Evans*, 284 Md. at 167 n.4 ("[E]ven where the employer knows of a criminal record and still hires the employee, this does not automatically make out a prima facie case of negligent hiring. Instead, it depends upon the nature of the criminal record and the surrounding circumstances"). If Jordan had been injured because Sasser and Meininger were impaired by drugs and, as a result of their impairment, *unintentionally* caused a collision involving Jordan's vehicle or ran Jordan off the road, then he might have established proximate cause. Under those circumstances, the type of harm suffered could be foreseeable to Western, because it is common knowledge that the use of drugs or alcohol can

affect a person's coordination and ability to operate vehicles or machinery. In this case, however, Jordan alleges that Sasser and Meininger *intentionally* threatened Jordan, cut his vehicle off, and tried to run him off the road. Thus, the harm actually suffered by Jordan was not foreseeable, because it was not the type of harm a reasonable person would expect a truck driver's drug use to cause. In other words, a reasonable person would not assume that someone under the influence of marijuana is likely to become violent towards others. *Cf. Bryant*, 923 F. Supp. at 752 n.20 (past sexual harassment by employee did not put employer on notice that employee might discriminate based on disability); *Evans*, 284 Md. at 167 n.4 (employee's prior conviction for intoxication did not put employer on notice that employee might be dishonest) (citations omitted).

Not only has Jordan failed to show that Western knew or should have known that Sasser and Meininger were potentially dangerous, he has also failed to show that Meininger's drug use actually caused his injuries. Even assuming that Meininger was under the influence of marijuana at the time of the incident, Jordan has produced no evidence that this drug use caused Meininger to act violently, nor has he shown that drug use in general is necessarily linked to the kind of violence exhibited by Sasser and Meininger in this case. Further, Jordan has not cited any cases where a court has found a causal link between drug use and assault.

IV.

Because Jordan has not shown that Western's negligence proximately caused his injuries, I need not decide whether Jordan's invoking of federal regulations preempts his state cause of action for negligence. Indeed, my analysis assumes without deciding that Western breached the standard of care, but that breach is actionable only if it is the proximate cause of the damages

suffered by the plaintiff. *Cramer*, 304 Md. at 713. In this case, it is not. Accordingly, Jordan's motion for summary judgment will be denied, and Western's motion for summary judgment will be granted.

A separate Order follows.

June 25, 2004
Date

/s/
Catherine C. Blake
United States District Judge

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v.	:	CIVIL NO. CCB-03-950
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ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. Plaintiff Jordan's motion for summary judgment (docket no. 62) is **Denied**;

2. Defendant Western's motion for summary judgment (docket no. 57) is **Granted**; and

3. Defendant Western's motion to strike the affidavit and curriculum vitae of Joseph Y. Morrison (docket no. 67) is **Denied** as moot.

June 25, 2004
Date

/s/
Catherine C. Blake
United States District Judge